

Notice of Intent to Fine on Form I-763. Service of this Notice shall be accomplished pursuant to part 103 of this chapter. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in §242.1 of this chapter with concurrence of a Service attorney.

(1) *Contents of the Notice of Intent to Fine.* (i) The Notice of Intent to Fine will contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.

(ii) The Notice of Intent to Fine will provide the following advisals to the respondent:

(A) That the person or entity has the right to representation by counsel of his or her own choice at no expense to the government;

(B) That any statement given may be used against the person or entity;

(C) That the person or entity has the right to request a hearing before an Administrative Law Judge pursuant to 5 U.S.C. 554-557, and that such request must be made within 30 days from the service of the Notice of Intent to Fine;

(D) That the Service will issue a final order in 45 days if a written request for a hearing is not timely received and that there will be no appeal of the final order.

(2) [Reserved]

(e) *Request for Hearing Before an Administrative Law Judge.* If a respondent contests the issuance of a Notice of Intent to Fine, the respondent must file with the INS, within thirty days of the service of the Notice of Intent to Fine, a written request for a hearing before an Administrative Law Judge. Any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. In computing the thirty day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. If the Notice of Intent to Fine was served by ordinary mail, five days shall be added to the prescribed thirty day period. In the request for a hearing, the

respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine.

(f) *Failure to file a request for hearing.* If the respondent does not file a request for a hearing in writing within thirty days of the day of service of the Notice of Intent to Fine (thirty-five days if served by ordinary mail), the INS shall issue a final order from which there is no appeal.

[52 FR 16221, May 1, 1987, as amended at 53 FR 8613, Mar. 16, 1988; 55 FR 25935, June 25, 1990; 56 FR 41786, Aug. 23, 1991; 61 FR 52236, Oct. 7, 1996]

§274a.10 Penalties.

(a) *Criminal penalties.* Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) of the Act shall be fined not more than \$3,000 for each unauthorized alien, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(b) *Civil penalties.* A person or entity may face civil penalties for a violation of section 274A of the Act. Civil penalties may be imposed by the Service or an administrative law judge for violations under section 274A of the Act. In determining the level of the penalties that will be imposed, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense. However, a single offense will include penalties for each unauthorized alien who is determined to have been knowingly hired or recruited or referred for a fee.

(1) A respondent found by the Service or an administrative law judge to have knowingly hired, or to have knowingly recruited or referred for a fee, an unauthorized alien for employment in the United States or to have knowingly continued to employ an unauthorized alien in the United States, shall be subject to the following order:

(i) To cease and desist from such behavior;

(ii) To pay a civil fine according to the following schedule:

(A) First offense—not less than \$250 and not more than \$2,000 for each unauthorized alien with respect to whom

the offense occurred before September 29, 1999, and not less than \$275 and not exceeding \$2,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after September 29, 1999.

(B) Second offense—not less than \$2,000 and not more than \$5,000 for each unauthorized alien with respect to whom the second offense occurred before September 29, 1999, and not less than \$2,200 and not exceeding \$5,500, for each unauthorized alien with respect to whom the second offense occurred on or after September 29, 1999; or

(C) More than two offenses—not less than \$3,000 and not more than \$10,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before September 29, 1999, and not less than \$3,300 and not exceeding \$11,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after September 29, 1999; and

(iii) To comply with the requirements of section 274a.2(b) of this part, and to take such other remedial action as is appropriate.

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with the employment verification requirements as set forth in § 274a.2(b), shall be subject to a civil penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred before September 29, 1999, and not less than \$110 and not more than \$1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999. In determining the amount of the penalty, consideration shall be given to:

- (i) The size of the business of the employer being charged;
- (ii) The good faith of the employer;
- (iii) The seriousness of the violation;
- (iv) Whether or not the individual was an unauthorized alien; and
- (v) The history of previous violations of the employer.

(3) Where an order is issued with respect to a respondent composed of distinct, physically separate subdivisions which do their own hiring, or their own recruiting or referring for a fee for em-

ployment (without reference to the practices of, and under the control of, or common control with another subdivision) the subdivision shall be considered a separate person or entity.

(c) *Enjoining pattern or practice violations.* If the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment or referral in violation of section 274A(a)(1)(A) or (2) of the Act, the Attorney General may bring civil action in the appropriate United States District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

[52 FR 16221, May 1, 1987, as amended at 55 FR 25935, June 25, 1990; 56 FR 41786, Aug. 23, 1991; 64 FR 47101, Aug. 30, 1999]

§ 274a.11 [Reserved]

Subpart B—Employment Authorization

§ 274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. Any alien who is within a class of aliens described in paragraphs (a)(3), (a)(4), (a)(6)–(8), or (a)(10)–(16) of this section, and who seeks to be employed in the United States, must apply to the Bureau of Citizenship and Immigration Services (BCIS) for a document evidencing such employment. BCIS may, in its discretion, determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States.

(1) An alien who is a lawful permanent resident (with or without conditions pursuant to section 216 of the Act), as evidenced by Form I-551 issued by the Service. An expiration date on the Form I-551 reflects only that the card must be renewed, not that the